

NO. PD-0585-21
IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

RECEIVED
COURT OF CRIMINAL APPEALS
12/21/2021
DEANA WILLIAMSON, CLERK

DANIELLE LEIGH EDWARDS,

Appellant

VS.

THE STATE OF TEXAS,

Appellee

APPELLANT'S BRIEF

On Discretionary Review
Third Court of Appeals No. 03-20-00138-CR
421st District Court of Caldwell County
Trial Court Cause No. 18-217
Honorable F.C. "Chris" Schneider, Presiding

ORAL ARGUMENT NOT REQUESTED

SUSAN SCHOON
Schoon Law Firm, P.C.
208 S. Castell, Suite 201
New Braunfels, TX 78130
PH: (830) 627-0044
FAX: (830) 620-5657
State Bar No. 24046803
susan@schoonlawfirm.com
Attorney for Appellant

IDENTITY OF PARTIES AND COUNSEL

<i>Appellant:</i>	Danielle Leigh Edwards
<i>Attorney for Appellant (on appeal)</i>	Susan Schoon State Bar No. 24046803 208 S. Castell, Suite 201 New Braunfels, TX 78130 PH: (830) 627-0044 FAX: (830) 620-5657 susan@schoonlawfirm.com
<i>Attorney for Appellant (at trial)</i>	John Butler State Bar No. 03526150 P.O. Box 40067 Austin, TX 78704 PH: (512) 472-3887 FAX: (512) 233-1787
<i>Attorney for the State (on appeal)</i>	Chase G. Goetz State Bar No. 24086703 1703 S. Colorado St., Box 5 Lockhart, TX 78644 PH: (512) 398-1811 FAX: (512) 398-1814
<i>Attorney for the State (at trial)</i>	Cassandra Benoist State Bar No. 24069371 1703 S. Colorado St., Box 5 Lockhart, TX 78644 PH: (512) 398-1811 FAX: (512) 398-1814
<i>Trial Court</i>	421 st Judicial District Court Caldwell County, TX Honorable F.C. “Chris” Schneider, Presiding

TABLE OF CONTENTS

IDENTITY OF PARTIES.....	i
INDEX OF AUTHORITIES.....	iv
STATEMENT OF THE CASE.....	1
STATEMENT REGARDING ORAL ARGUMENT.....	2
GROUND FOR REVIEW.....	3
SUMMARY OF ARGUMENT.....	4
ARGUMENT AND AUTHORITIES.....	6
I. Factual Background.....	6
II. Standard of Review – Sufficiency of the Evidence.....	7
III. The Evidence in this Case is Insufficient to Prove that Appellant is Guilty of Every Essential Element Beyond a Reasonable Doubt.....	8
A. The Elements of Injury to a Child.....	8
B. The Indictment.....	9
C. The State’s Burden.....	9
D. Determining Sufficiency of the Evidence of “Serious Mental Deficiency, Impairment, or Injury.”.....	9
E. The Evidence at Trial.....	13
F. The Third Court of Appeals’ Decision Should be Reversed.....	15
PRAYER.....	17

CERTIFICATE OF COMPLIANCE.....	18
CERTIFICATE OF SERVICE.....	18

INDEX OF AUTHORITIES

CASES	PAGES
<i>Edwards v. State</i> , No. 03-20-00138-CR (Tex. App.—Austin, delivered July 1, 2021) (not designated for publication).....	<i>passim</i>
<i>Ex parte Hammons</i> , No. 10-19-00362-CR (Tex. App.—Waco, delivered May 26, 2021).....	11, 14
<i>Franco v. State</i> No. 13-14-00108-CR, 2016 WL 3389967 (Tex. App.—Corpus Christi 2016, no pet.).....	15, 16
<i>Jackson v. Virginia</i> , 443 U.S. 307, 316 (1979).....	7
<i>Kenney v. State</i> , 750 S.W.2d 10 (Tex. App.—Texarkana 1988, pet. ref'd).....	14
<i>Lane v. State</i> , 151 S.W.3d 188 (Tex. Crim. App. 2004).....	7
<i>Laster v. State</i> , 275 S.W.3d 512 (Tex. Crim. App. 2009).....	7
<i>Malik v. State</i> , 953 S.W.2d 234 (Tex. Crim. App. 1997).....	8
<i>Medford v. State</i> , 13 S.W.3d 769 (Tex. Crim. App. 2000).....	10
<i>Moore v. State</i> , 739 S.W.2d 347 (Tex. Crim. App. 1987).....	14
<i>Rollerson v. State</i> , 227 S.W.3d 718 (Tex. Crim. App. 2007).....	8

Stuhler v. State,
218 S.W.3d 706 (Tex. Crim. App. 2007).....10

Watkins v. State,
619 S.W.3d 265 (Tex. Crim. App. 2021).....11

Williams v. State,
235 S.W.3d 742 (Tex. Crim. App. 2007).....9

STATUTES AND RULES

TEX. PENAL CODE § 1.07.....9,10

TEX. PEN CODE §22.04.....*passim*

DICTIONARIES

Black’s Law Dictionary 1101 (6th abridged ed. 2000).....12

WEBSTER’S COLLEGIATE DICTIONARY (10th Edition 1993).....11

MERRIAM-WEBSTER, <http://merriam-webster.com/dictionary/impairment>
(last visited April 27, 2021).....11

Mental Deficiency, Merriam-Webster.com,
<https://www.Merriam-webster.com/dictionary/mental%20deficiency>
(last visited June 29, 2021).....12

Mental Injury, Law Insider, <https://www.lawinsider.com/dictionary/mental-injury> (last visited June 29, 2021).....12

Mental Impairment, Collins Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/mental-impairment> (last visited June 29, 2021).....12

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW, Danielle Leigh Edwards, Appellant in the cause below and files her brief on discretionary review.

STATEMENT OF THE CASE

Danielle Leigh Edwards was charged by indictment with [Reckless] Injury to a Child, a second-degree felony. (CR 12) She was found guilty by a jury and sentenced by the trial court to twelve (12) years in the Texas Department of Corrections, Institutional Division.

Appellant timely filed notice of appeal. In an unpublished opinion, the Third Court of Appeals affirmed the conviction. *Edwards v. State*, No. 03-20-00138-CR (Tex. App.—Austin, delivered July 1, 2021)(not designated for publication). No motion for rehearing was filed. Appellant presented one ground in her Petition for Discretionary Review, which this Court granted. This Court granted an extension of time to December 15, 2021, and Appellant files a second motion for extension of time along with this brief, requesting this Honorable Court to grant an extension to today, December 20, 2021.

STATEMENT REGARDING ORAL ARGUMENT

Appellant did not request, nor did this Court order oral argument in this case.

GROUND FOR REVIEW

Appellant presents one ground for review:

The Court of Appeals erred in holding that evidence of a high level of cocaine in a child's body alone is sufficient to prove that the child suffered "serious *mental* deficiency, impairment or injury," as required for conviction of injury to a child.

SUMMARY OF ARGUMENT

In defending the verdict in this case, what evidence might the prosecutor cite to demonstrate that there was sufficient evidence? Consider her closing argument to the jury—what evidence of serious mental impairment or deficiency did the prosecutor highlight for the jury?

Now, let's talk about the serious mental impairment or deficiency. She's two now, a little over two. You heard from Mr. Jefferies. They're not quite sure what the effects are going to be. But the studies haven't been done. They know there can be hardening of the right side of the heart 20 years from now because she's an addict. She was addicted levels in her system. *So we don't know the possibilities, but they are there.*
(4 RR 53-54)(emphasis added)

What evidence did the Court of Appeals cite in affirming the sufficiency of the evidence that Appellant caused her daughter, L.B. serious mental deficiency, impairment, or injury? After the Court reviewed a number of dictionary definitions of “mental deficiency, impairment, or injury,” as well as definitions of the word, “serious,” the Court was unable to apply them to evidence of L.B.’s injuries—because the record contains no evidence of any distinct injury to L.B., physical or mental. Ultimately, the Court of Appeals held that

the result of L.B.'s hair follicle test indicating high levels of cocaine meant that L.B. had been addicted to cocaine and had experienced withdrawal, which in the Court's opinion, was sufficient evidence that L.B. suffered from a serious mental deficiency, impairment or injury.

The Court of Appeals erred, the evidence was insufficient.

ARGUMENT & AUTHORITIES

I. Factual Background

Appellant admitted to an investigator for Child Protective Services (CPS) and signed an admission form that she had used cocaine on multiple dates in early to mid-June 2018, at which time she periodically breast fed her one-year-old daughter, L.B. L.B. was removed from her home and placed with a guardian, Jane Davis. (3 RR 18-21, St. Ex. 2) On July 13, 2018, per CPS instructions, Davis took L.B. for a hair follicle drug test. (3 RR 14, 19; St. Ex. 1) The results of the testing reflected a very high level of cocaine. (2 RR 176; St. Ex. 1)

When asked what he was able to determine from the test results, the State's purported expert, Bruce Jefferies, testified that "this child," who he did not examine, "had a serious issue with ingestion of cocaine and its metabolites." He testified that the potential short-term effects were "just like any person. . .loss of appetite, psychological effects, your heart racing." Jeffries went on to say that, ". . .the real possibility is an overdose and death on anybody, but primarily you know, I don't know how long this has

been going on.” (4 RR 21) He also mentioned the potential for a child to have seizures. (4 RR 23)

Jane Davis became L.B.’s guardian on June 21, 2018, and observed at that time that L.B. was “clingy” and “very fussy.” (4 RR 34) Ms. Davis testified that L.B. had been evaluated and no developmental delays were identified. Further, Ms. Davis testified that she had not noticed any developmental issues.

II. Standard of Review – Sufficiency of the Evidence

The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution requires that a criminal conviction be supported by a rational trier of fact's findings that the accused is guilty of every essential element of a crime beyond a reasonable doubt. *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)).

In assessing a challenge to the sufficiency of the evidence, courts examine the evidence in the record to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, at 319; *Lane v. State*, 151 S.W.3d 188, 191-92 (Tex. Crim. App. 2004).

The sufficiency of the evidence is measured against the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). A hypothetically correct jury charge should accurately set out the law; be authorized by the indictment; not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability; and adequately describe the particular offense. *Id.*

Evidence is reviewed in the light most favorable to the verdict, and it is assumed that the trier of fact resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences in a manner that supports the verdict. *See Rollerson v. State*, 227 S.W.3d 718, 724 (Tex. Crim. App. 2007).

III. The Evidence in this Case is Insufficient to Prove that Appellant is Guilty of Every Essential Element Beyond a Reasonable Doubt.

A. The Elements of Injury to a Child

A person commits the offense of injury to a child if she “intentionally, knowingly, recklessly, or with criminal negligence, by act . . . causes to a child . . . 1) serious bodily injury; 2) serious mental deficiency, impairment, or injury; or 3) bodily injury.” TEX.

PENAL CODE § 22.04. The Penal Code provides definitions of the terms “bodily injury” and “serious bodily injury,” but does not define “serious mental deficiency, impairment, or injury. TEX. PENAL CODE § 1.07.

B. The Indictment

The indictment in this case alleged that Appellant “recklessly cause[d] serious mental deficiency, impairment, or injury to [L.B.], a child 14 years of age or younger, by allowing [L.B.] access to cocaine and the infant was able to ingest the cocaine.” (CR 12)

C. The State’s Burden

Injury to a child is a “result of conduct” offense. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Therefore, the State had the burden to prove that Appellant caused the result (L.B.’s serious mental deficiency, impairment or injury) with the requisite criminal intent. *Id.*

D. Determining Sufficiency of the Evidence of “Serious Mental Deficiency, Impairment, or Injury.”

TEX. PENAL CODE § 22.04 provides the elements that must be proved for a conviction of the offense of injury to a child. This “result of conduct” offense requires the State to prove that the

defendant caused one of three results: 1) serious bodily injury; 2) serious mental deficiency, impairment, or injury; or 3) bodily injury.” *See Stuhler v. State*, 218 S.W.3d 706, 718 (Tex. Crim. App. 2007) (“Thus, injury to a child, a ‘result of conduct’ offense is defined by the result of the defendant’s conduct, not the manner or means of committing the injury.”)

The Penal Code definitions of “serious bodily injury¹” and “bodily injury²” aid in determining whether evidence in a particular case is sufficient, but there is no definition provided for “serious mental deficiency, impairment, or injury.” When analyzing for legal sufficiency, non-technical terms that are not legislatively defined are to be given their plain and ordinary meaning unless the term has a technical meaning. *See Medford v. State*, 13 S.W.3d 769, 771-72 (Tex. Crim. App. 2000). As the Court of Appeals noted, “[r]eviewing courts ‘may consult standard or legal dictionaries in determining the fair, objective meaning of undefined statutory

¹ “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” TEX. PENAL CODE §1.07(a)(46);

² “physical pain, illness, or any impairment of physical condition.” TEX. PENAL CODE §1.07(a)(8).

terms.” *Slip. Op.* at *4, citing *Watkins v. State*, 619 S.W.3d 265, 272-73 (Tex. Crim. App. 2021).

In *Ex parte Hammons*, the 10th Court of Appeals in Waco considered a constitutional challenge to TEX. PENAL CODE § 22.04(a)(2). No. 10-19-00362-CR (Tex. App.—Waco, delivered May 26, 2021)(overruled on other grounds). Hammons argued that the lack of statutory definitions of “mental deficiency, impairment or injury,” and “serious” render the statute void for vagueness. *Id.* at *1. The Court disagreed, finding that “mental” has an ordinary meaning—referring to the mind. *Id.* at *3. Resorting to use of dictionary definitions, the Court noted that “deficiency” means “the quality or state of being defective or of lacking some necessary quality or element.” *Id.*, citing WEBSTER’S COLLEGIATE DICTIONARY (10th Edition 1993). “Injury” is defined as “hurt, damage, or loss sustained,” and “impairment” is “diminishment or loss of function or ability.” *Id.*; MERRIAM-WEBSTER, <http://merriam-webster.com/dictionary/impairment> (last visited April 27, 2021). *Id.* Finally, according to the Court, “[s]erious is commonly understood to require a heightened or excessive level of the deficiency, impairment, or injury.” *Id.* at *4.

The Court of Appeals in the instant case recited these definitions with approval and retrieved definitions for the phrases, rather than the individual words. *Slip Op.* at *5-6. Mental deficiency is defined as “a deficiency in cognitive functioning,” mental injury means “the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function;” and mental impairment is “a state of arrested or incomplete development of mind.” *Id.*, citing *Mental Deficiency*, Merriam-Webster.com, [https:// www. merriam-webster.com/dictionary/mental%20deficiency](https://www.merriam-webster.com/dictionary/mental%20deficiency) (last visited June 29, 2021); *Mental Injury*, Law Insider, [https:// www. lawinsider.com/dictionary/mental-injury](https://www.lawinsider.com/dictionary/mental-injury) (last visited June 29, 2021); and *Mental Impairment*, Collins Dictionary, [https:// www. collinsdictionary.com/us/dictionary/english/mental-impairment](https://www.collinsdictionary.com/us/dictionary/english/mental-impairment) (last visited June 29, 2021). *Id.*

Regarding the word “serious,” the Court of Appeals consulted Black’s Law Dictionary, which states that, as it relates to injuries, “serious” means “dangerous, potentially resulting in death or other severe consequences.” Black’s Law Dictionary 1101 (6th abridged ed. 2000). *Id.*

After having considered the meaning of the terms, the Court of Appeals in the instant case proceeded to evaluate the evidence that L.B. suffered a “serious mental deficiency, impairment, or injury,” but did not make use of these definitions in its evaluation.

E. The Evidence at Trial

In discussing the evidence of the injury element, the Court of Appeals considered the following: 1) that Appellant had consumed cocaine and breastfed L.B.; 2) that the testing of L.B.’s hair sample revealed a high level of cocaine; 3) that Jefferies testified that the test results “shocked” him and were “indicative of an addict that’s doing it all the time which is going to cause...withdrawals,” and would lead to “loss of appetite” and “psychological effects” because cocaine attacks the nervous system. *Slip Op.* at *6-7. Further, the Court noted, Jeffries testified that the cocaine could cause seizures and other brain disorders, as well as both physical and mental developmental delays; 4) that although L.B.’s guardian testified that testing had shown no developmental delays, it was unknown whether she was referring to physical or mental delays, and there was no information on what type of testing had been done; 5) that

the guardian testified that L.B. was “very clingy, very fussy” and a doctor had said L.B. was small for her age.”

Very little of this cited evidence is relevant to whether L.B. suffered a “serious mental deficiency, impairment, or injury.” First, as noted, *supra*, the Court of Appeals in the instant case agreed with the *Hammons* court that “mental” refers to the mind, yet most of the cited evidence does not. Second, the evidence that did relate to the mind, was merely non-specific conjecture of what could happen³—not what did. *See Kenney v. State*, 750 S.W.2d 10, 11 (Tex. App.—Texarkana 1988, pet. ref’d)(“The examining physician's testimony does not indicate that any of the victim's injuries actually caused a ‘substantial risk of death,’ but rather indicates that such injuries could cause that risk. This type of hypothetical is insufficient to meet any portion of the definition,” citing *Moore v. State*, 739 S.W.2d 347 (Tex. Crim. App. 1987)).

Viewing the evidence in a light most favorable to the verdict and assuming the jury resolved any conflicts in the evidence—of which there were few—to support the guilty verdict, the most one

³ “psychological effects;” “brain disorders;” “physical and mental developmental delays.”

can glean from this record (regarding mental status) is the following:

- When L.B. was removed and placed with a guardian, the one-year-old was “clingy” and “fussy;”
- An evaluation of L.B.’s development showed no delays; and
- The guardian observed no developmental issues.

The State did not meet its burden. No rational trier of fact could have found the essential elements of this offense beyond a reasonable doubt. Because of the lack of evidence of injury, it was impossible for the Court to apply any of the definitions of “mental deficiency, impairment or injury,” much less “*serious* mental deficiency, impairment or injury. So the Court decided that assumptions about addiction and withdrawal were sufficient.

F. The Third Court of Appeals’ Decision Should be Reversed.

Ultimately, without having applied any of the definitions it previously cited to the evidence at trial, or even referencing the definitions at all, the Court of Appeals equated its analysis with those courts⁴ that found a diagnosis of post-traumatic stress disorder to be “the type of deficiency, impairment, or injury

⁴ Specifically, *Franco v. State* No, 13-14-00108-CR, 2016 WL 3389967 at *7 (Tex. App.—Corpus Christi 2016, no pet.)(not designated for publication)

contemplated by the Penal Code.” *Slip Op.* at *7-8. “Similarly. . .we believe that the evidence in this case demonstrating that L.B. became addicted to cocaine and experienced withdrawal is sufficient to establish that L.B. suffered from a serious mental deficiency, impairment or injury.” *Id.* at *8.

Assuming for the sake of argument that the level of cocaine indicated by the hair follicle test is indeed proof that L.B. was addicted and suffered withdrawals, there is no evidence in the record indicating that it caused any particular injury to L.B., much less any mental injury. There is no evidence that she was even examined by a doctor when the results came back. The record is simply void of any evidence of any injury. The Court of Appeals could not apply its previously defined terms because there was simply no evidence to which it could apply.

Franco is distinguishable. Two different psychologists evaluated the child. He was diagnosed with post-traumatic stress disorder (PTSD) and attention deficit disorder. *Id.* at *8-9. One psychologist testified that the three years of abuse the child suffered were sufficient to cause PTSD, and serious mental injury. *Id.* Furthermore, a licensed professional counselor who treated the

child testified that he presented as younger than his current age (an “arrest” in development), that the defendants caused him serious mental injury and in fact, “changed who he is.” *Id.*

PRAYER

Appellant Danielle Edwards prays that this Honorable Court reverse the Third Court of Appeals’ judgment and order her acquittal.

Respectfully Submitted:

/s/Susan Schoon
SUSAN SCHOON
Schoon Law Firm, P.C.
208 S. Castell, Suite 201
New Braunfels, TX 78130
State Bar No. 24046803
PH: (830) 627-0044
FAX: (830) 620-5657
susan@schoonlawfirm.com

Attorney for Appellant

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that, according to Microsoft Word's word count tool, this document contains 2741 words.

_____/s/ Susan Schoon

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of Appellant's Brief was served on the District Attorney, Caldwell County, Texas and the State Prosecuting Attorney on this the 20th day of December 2021 by efile service.

_____/s/ Susan Schoon

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Susan Schoon
Bar No. 24046803
susan@schoonlawfirm.com
Envelope ID: 60202613
Status as of 12/21/2021 9:39 AM CST

Associated Case Party: StateofTexas

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		stacey.soule@spa.texas.gov	12/20/2021 8:19:18 PM	SENT
Chase Goetz		chase.goetz@co.caldwell.tx.us	12/20/2021 8:19:18 PM	SENT